



Dangerous Goods Advisory Council

Suite 301 ♦ 1101 Vermont Avenue NW ♦ Washington DC 20005 ♦ 202/289-4550 ♦ Fax 202/289-4074 ♦ www.dgac.org

RECEIVED
DEPT. OF TRANSPORTATION
02 JAN -5 PM 5:00

December 29, 2003

Dr. Robert A. McGuire
Associate Administrator for Hazardous
Materials Safety
U.S. Department of Transportation
Research and Special Programs Administration
400 Seventh Street, S.W.
Washington, DC 20590-0001

RSPA - 2003 - 16456 - 13

Re: Houston, Texas Requirements on Storage of
Hazardous Materials During Transportation (Docket No.
RSPA-03-16456 (PDA-30 [R]; 68 FR 64413))

Dear Dr. McGuire:

The Dangerous Goods Advisory Council (DGAC), supports the Application by Societe' Air France for a determination that federal hazardous material transportation law preempts certain requirements contained in the Fire Code of the City of Houston, Texas. For the reasons set forth below, RSPA should issue a determination of preemption of the requirements since they are an obstacle to the safe transportation of hazardous materials under the federal hazardous materials law and relate to covered subjects addressed therein.

Air France requests preemption of the provisions of the Houston Fire Code that (1) require the submission of a hazardous materials management plan (HMMP) and a hazardous materials inventory statement (HMIS) for the storage of hazardous materials while in transportation; and (2) require secondary containment measures and the use of specialized storage cabinets.

Information and documentation requirements as prerequisites to hazardous materials transportation have been considered on many occasions in earlier proceedings over the past twenty-five years. Where such requirements exceeded Federal requirements, they were found to create potential delay or diversion of hazardous materials during transportation thereby being an obstacle to the execution of the HMTA and the HMR, and thus preempted.

If allowed to stand, requirements such as Houston's HMMP and HMIS will likely result in the diversion of hazardous materials to avoid Houston, because many transportation companies will find it impracticable to comply with the requirements. The potential diversion of traffic is what Congress sought to prevent in its support of hazardous materials regulations for loading, unloading and storage incidental to transportation.

The sections of the Houston Fire Code that require secondary containment and use of specialized storage cabinets during the course of transportation are preempted since they conflict with two of the covered subjects addressed in 49 U.S.C. 5125 (b) (1) (B) that relate to packing/repacking and handling. The required use of storage cabinets certainly is a form of packing or repacking that goes beyond the extensive federal packaging requirements; and the required secondary containment certainly is a form of handling since special handling would be necessary to place packages in some form of secondary containment.

For these reasons, we view the provisions of the Houston Fire Code discussed above, as addressed in the application of Societe Air France, to be preempted under 49 U.S.C. 5125.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan I. Roberts", written in a cursive style.

Alan I. Roberts
President

cc: Mr. Frazer Hilder
Office of the Chief Counsel
Research and Special Programs Administration
U.S. Department of Transportation
Washington, DC 20590-0001

Certificate of Service

I certify that on December 29, 2003, a copy of the comments of the Dangerous Goods Advisory Council on the application of Societe Air France for a determination that the provisions of 49 U.S.C. 5125 preempt the requirements of the City of Houston, Texas (as cited at 68 FR 64413) relating to the handling of hazardous materials during transportation were forwarded by first class mail to the following:

Michael Goldman, Esq
Silverberg, Goldman & Bikoff, L.L.P
1103 30th Street, NW Suite 120
Washington, DC 20007

Randy Rivin, Esq.
Legal Department
City of Houston
P.O. Box 1562
Houston, TX 77251

#



Alan I. Roberts
President
Dangerous Goods Advisory Council
1101 Vermont Avenue NW
Washington, DC 20005